

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
KRISTIN K. MAYES

In the matter of)	
UNITY FINANCIAL, LLC an Arizona)	DOCKET NO. S-03555A-04-0000
Limited Liability Corporation (LLC),)	
3134 East McKellips, Unit 193)	DECISION NO. <u>67354</u>
Mesa AZ 85213)	
REX E. KUHN , an individual,)	ORDER TO CEASE AND DESIST, ORDER
3134 East McKellips, Unit 193)	OF RESTITUTION, ORDER FOR
Mesa AZ 85213)	ADMINISTRATIVE PENALTIES AND
)	CONSENT TO SAME BY RESPONDENT
Respondents.)	UNITY FINANCIAL, LLC AND BY
)	RESPONDENT REX E. KUHN
)	

15 RESPONDENT UNITY FINANCIAL, LLC (“UNITY”) and RESPONDENT REX E.
16 KUHN (“KUHN”) (collectively “RESPONDENTS”) elect to permanently waive any right to a
17 hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et*
18 *seq.* (“Securities Act”) with respect to this Order To Cease And Desist, with respect to an Order Of
19 Restitution, and with respect to Administrative Penalties and Consent to Same by Respondent
20 Unity Financial, L.L.C. and Respondent Rex E. Kuhn (“Order”). RESPONDENTS UNITY and
21 KUHN admit the jurisdiction of the Arizona Corporation Commission (“Commission”); neither
22 admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent
23 to the entry of this Order by the Commission.

I.**FINDINGS OF FACT**

1. Respondent KUHN is a resident of the state of Arizona, with a last known residence address at 3134 East McKellips, Unit 193, Mesa AZ 85213.

2. At all times material hereto, KUHN was not registered as a securities salesman nor licensed as an investment advisor in the State of Arizona.

3. UNITY is an Arizona limited liability company. At all times material hereto, UNITY was not registered as a securities broker/dealer in the State of Arizona.

4. KUHN is the named Manager for UNITY.

5. Between 1999 and the present, RESPONDENTS offered for sale and sold securities in the form of promissory notes within and from the State of Arizona. The securities in question were not registered, nor were they exempt from registration.

6. RESPONDENTS began soliciting investments from KUHN's family and friends in 1999. The purpose of the investments was to allow RESPONDENTS to invest the money in the securities market. RESPONDENTS promised investors, through written contracts, a guaranteed return on their investments. RESPONDENTS issued to investors written promissory notes that indicated an interest rate of 10-40% per annum.

7. RESPONDENTS informed investors that they would be engaging in stock market investments.

8. RESPONDENTS engaged extensively in option trading in puts and calls. The trading was day trading and short term trading on margin. Day trading is a trading strategy in which the investor buys and sells securities in a very limited time frame. The purchase of options is speculative, day trading in securities is speculative, and trading on margin is speculative.

1 9. Throughout the vast majority of the course of operation of RESPONDENTS'
2 business, RESPONDENTS used amounts invested by new investors to pay monies owed to earlier
3 investors.

4 10. RESPONDENTS lost a substantial portion of their portfolio through poor
5 investments, and further depleted their assets by using the monies to pay KUHN's personal expenses.

6 11. RESPONDENTS made untrue statements or misleading omissions of material facts,
7 including, but not limited to, the following:

8 a) KUHN failed to advise all investors of his lack of experience in trading.

9 b) KUHN failed to advise all investors that neither KUHN nor UNITY was
10 registered as a securities salesman or dealer.

11 c) RESPONDENTS failed to advise investors that the promissory notes were
12 securities, and were required to be registered as such or exempt from registration under Arizona
13 law.

14 d) RESPONDENTS failed to fully disclose to investors the substantial risks of
15 their speculative trading.

16 e) RESPONDENTS failed to advise all investors that KUHN would use
17 investor funds for his personal expenses.

18 f) RESPONDENTS materially misrepresented their cash flow and true
19 financial condition regarding indebtedness.

20 g) RESPONDENTS consistently issued false statements to the investors
21 indicating that their capital investment had been preserved and that interest was accruing on each
22 investor's money, when in fact the money had been depleted by poor investments and through
23 spending to support KUHN's personal expenses.
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12. KUHN raised approximately \$2,149,767.18 (which includes interest at 10% per annum from the date of investment) from approximately 26 investors, of which approximately 17 are residents of Arizona. He has repaid investors approximately \$522,203.13. The amount that RESPONDENTS owe to investors is \$1,627,564.05 which includes initial investments and interest at 10% per annum from October 14, 2004.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. RESPONDENTS offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. RESPONDENTS violated A.R.S. § 44-1991 by making untrue statements or misleading omissions of material facts.

6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III.**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and RESPONDENTS' consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, and any of RESPONDENTS' agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 that RESPONDENTS shall, jointly and severally, pay restitution to investors shown on the records of the Commission in the amount of \$1,627,564.05, plus interest at the rate of 10% per annum from October 14, 2004 until paid in full. Payment shall be made as follows: \$50,000.00 immediately on October 14, 2004. The amount outstanding shall accrue interest at the rate of 10% per annum from October 14, 2004 until paid in full. Any remaining amount not paid on this date may be referred for possible collections without further Notice or Demand. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. Any funds that the Attorney General is unable to disburse shall revert to the State of Arizona. If RESPONDENTS do not comply with this Order of restitution, any outstanding balance shall be in default and shall be immediately due and payable.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036 that RESPONDENTS shall pay an administrative penalty in the amount of \$15,000.00. Payment shall be made in full by cashier's check or money order on the date of this Order, payable to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from October 14, 2004 until paid in full. The payment obligations for these administrative penalties shall be subordinate to any

1 restitution obligations ordered herein and shall become immediately due and payable only after
2 restitution payments have been paid in full.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

5
6 /s/ Marc Spitzer William A. Mundell Jeffrey Hatch-Miller
7 CHAIRMAN COMMISSIONER COMMISSIONER

8
9 Lowell Gleason Kristin Mayes
COMMISSIONER COMMISSIONER

10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
11 Executive Secretary of the Arizona Corporation
12 Commission, have hereunto set my hand and caused the
13 official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this 20th day of
October, 2004.

14
15 /s/ Brian C. McNeil
16 BRIAN C. McNEIL
17 Executive Secretary

18 _____
19 DISSENT

20
21 This document is available in alternative formats by contacting Yvonne L. McFarlin, Executive
22 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
ymcfarlin@cc.state.az.us.

23 (MMA)
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CONSENT TO ENTRY OF ORDER

1. RESPONDENT REX E. KUHN (“KUHN”), an individual, admits the jurisdiction of the Commission over the subject matter of this proceeding. KUHN acknowledges that he has been fully advised of his right to a hearing to present evidence and call witnesses and KUHN knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. KUHN acknowledges that this Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same by Respondent Unity Financial, LLC and by Respondent Rex E. Kuhn (“Order”) constitutes a valid final order of the Commission.

2. KUHN knowingly and voluntarily waives any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. KUHN acknowledges that he has been represented by counsel in this matter, he has reviewed this Order with his attorney and understands all terms it contains.

4. KUHN neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order. KUHN agrees that he shall not contest their validity in any present or future administrative proceeding before the Commission or any other state agency concerning the denial or issuance of any license or registration required by the State to engage in the practice of any business or profession.

5. By consenting to the entry of this Order, KUHN agrees not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual basis. KUHN will undertake steps necessary to assure that all of his agents and employees understand and comply with this agreement.

1 6. While this Order settles this administrative matter between KUHN and the
2 Commission, KUHN understands that this Order does not preclude the Commission from
3 instituting other administrative proceedings based on violations that are not addressed by this
4 Order.

5 7. KUHN understands that this Order does not preclude the Commission from referring
6 this matter to any governmental agency for administrative, civil, or criminal proceedings that may
7 be related to the matters addressed by this Order.

8 8. KUHN understands that this Order does not preclude any other agency or officer of the
9 state of Arizona or its subdivisions from instituting administrative, civil or criminal proceedings
10 that may be related to matters addressed by this Order.

11 9. KUHN agrees that he will not apply to the state of Arizona for registration as a
12 securities dealer or salesman or for licensure as an investment adviser or investment adviser
13 representative at any time in the future.

14 10. KUHN agrees that he will not exercise any control over any entity that offers or sells
15 securities or provides investment advisory services, within or from Arizona.

16 11. KUHN agrees that until restitution and penalties are paid in full, KUHN will notify the
17 Director of the Securities Division within 30 days of any change in home address or any change in
18 RESPONDENT KUHN's ability to pay amounts due under this Order.

19 12. KUHN understands that default shall render him liable to the Commission for its costs
20 of collection and interest at the maximum legal rate.

21 13. KUHN consents to the entry of this Order and agrees to be fully bound by its terms and
22 conditions. If KUHN breaches any provision of this Order, the Commission may vacate this Order
23 and restore this case to its active docket.

/s/ Rex E. Kuhn

REX E. KUHN

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of August, 2004.

/s/ Jared Ragozzine

NOTARY PUBLIC

My Commission Expires:

May 12, 2008

CONSENT TO ENTRY OF ORDER

14. RESPONDENT UNITY FINANCIAL, LLC (“UNITY”) admits the jurisdiction of the Commission over the subject matter of this proceeding. UNITY acknowledges that it has been fully advised of its right to a hearing to present evidence and call witnesses and UNITY knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. UNITY acknowledges that this Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same by Respondent Unity Financial, LLC and by Respondent Rex E. Kuhn (“Order”) constitutes a valid final order of the Commission.

15. UNITY knowingly and voluntarily waives any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

16. UNITY acknowledges that it has been represented by counsel in this matter, has reviewed this Order with its attorney and understands all terms it contains.

17. UNITY neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order. UNITY agrees that it shall not contest their validity in any present or future administrative proceeding before the Commission or any other state agency concerning the denial or issuance of any license or registration required by the State to engage in the practice of any business or profession.

18. By consenting to the entry of this Order, UNITY agrees not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual basis. UNITY will undertake steps necessary to assure that all of its agents and employees understand and comply with this agreement.

1 19. While this Order settles this administrative matter between UNITY and the
2 Commission, UNITY understands that this Order does not preclude the Commission from
3 instituting other administrative proceedings based on violations that are not addressed by this
4 Order.

5 20. UNITY understands that this Order does not preclude the Commission from referring
6 this matter to any governmental agency for administrative, civil, or criminal proceedings that may
7 be related to the matters addressed by this Order.

8 21. UNITY understands that this Order does not preclude any other agency or officer of the
9 state of Arizona or its subdivisions from instituting administrative, civil or criminal proceedings
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12 securities dealer or salesman or for licensure as an investment adviser or investment adviser
13 representative at any time in the future.

14 23. UNITY agrees that it will not exercise any control over any entity that offers or sells
15 securities or provides investment advisory services, within or from Arizona.

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17 Director of the Securities Division within 30 days of any change in home address or any change in
18 UNITY's ability to pay amounts due under this Order.

19 25. UNITY understands that default shall render UNITY liable to the Commission for the
20 Commission's costs of collection and interest at the maximum legal rate.

21 26. UNITY consents to the entry of this Order and agrees to be fully bound by its terms and
22 conditions. If UNITY breaches any provision of this Order, the Commission may vacate this
23 Order and restore this case to its active docket.

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27. KUHN represents that he is the Manager of UNITY and has been authorized by UNITY to enter into this Order for and on behalf of it. KUHN represents that he is authorized by law to enter into this Order for and on behalf of UNITY.

UNITY FIANCIAL LLC

/s/ Rex E. Kuhn
By REX E. KUHN
Its Manager

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of August, 2004.

/s/ Jared Ragozzine

NOTARY PUBLIC

My Commission Expires:

May 12, 2008